

**GREENWOOD CITY COUNCIL MEETING**  
**Wednesday, January 4, 2012, 7:00 P.M.**  
**Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331**

**1. CALL TO ORDER – ROLL CALL – APPROVAL OF AGENDA**

Mayor Kind called the meeting to order at 7:01 P.M.

Members Present: Mayor Kind; Councilmembers Fletcher, Page, Quam and Rose

Others Present: City Attorney Kelly and City Zoning Administrator/City Clerk Karpas

Members Absent: None

**Quam moved, Rose seconded, approving the agenda as presented. Motion passed 5/0.**

**2. CONSENT AGENDA**

Mayor Kind reviewed the items on the Consent Agenda.

**Fletcher moved, Quam seconded, approving the items contained on the Consent Agenda.**

- A. December 6, 2011, City Council Meeting Minutes**
- B. November 2011 Cash Summary Report**
- C. December 2011 Verifieds, Check Register, Electronic Fund Transfers**
- D. January 2012 Payroll Register**

**Motion passed 5/0.**

**3. MATTERS FROM THE FLOOR**

There were no matters from the floor presented this evening.

**4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS**

- A. Hennepin County Update from Commissioner Jan Callison**

Mayor Kind introduced Hennepin County Commissioner Jan Callison who was present to give an update on what is happening in Hennepin County.

Commissioner Callison provided Council with a Hennepin County Fast Facts sheet. It contains some basic statistics, information about governance and information about programs the County runs. She also provided Council with a document titled Change in Hennepin County Population and Income Cities Under 20,000. She noted it pertains to Greenwood. She stated Greenwood's population dropped 5.6 percent between 2000 and 2010, and that is fairly consistent with cities within her district. It also shows

that the median family income and median household income both went up, and that is not characteristic of many cities during the recession.

Commissioner Callison explained that Hennepin County tax levy is staying flat for 2012. Unfortunately, in 2012, many Hennepin County property owners will see a rise in taxes due to the State Legislature's change to the market value homestead exclusion. The Hennepin County budget for 2012 reflects a reduction of approximately \$1.65 billion when compared to the 2011 adopted budget. For the last few years the budget has declined and property taxes have remained relatively flat. Because property taxes fluctuate between commercial and residential and higher and lower valued homes an individual property tax statement may not always reflect that.

Commissioner Callison noted that 2012 is a redistricting year for Hennepin County. She explained that similar to the State Legislature and cities, the County has to balance its seven district boundaries based on the 2010 census. It results in her having to gain approximately 7,000 people in District 6 which she represents. District 6 should have a population of about 167,000. The decision about how to increase the population will be made by the Hennepin County Board of Commissioners. Before the Board can take any action, the State Legislature has to take action. After that the cities in the County have to take action because city precinct boundaries cannot be broken up. Based on that timeline, County district boundaries will probably not be set until April of 2012. There will be elections for commissioners for at least three County districts including District 6, and that filing opens in May.

Commissioner Callison stated the County Board has approved construction of a new communications facility for the Hennepin County Sheriff's Office. The current facility, which was built over 50 years ago, is very outdated. The estimated cost to build the new facility is around \$30 million. With regard to the Excelsior Library project, she explained the Commissioners have created a task force with the help of the City of Excelsior to help ensure all parties have a common understanding of what the residents and the Commissioners envision for the replacement library. The hope is to get to a state where the County is ready to seek approval from Excelsior for the new library in 2012. She noted there are no drawings for people to look at yet. If an agreement is reached about a new library, construction would not begin until 2013 and hopefully be completed in 2014. She noted the budget for that project has been reduced a little.

Commission Callison thanked Council for the opportunity to speak to them.

Mayor Kind thanked Commissioner Callison for all that she does for District 6.

Councilmember Quam asked how the County's redistricting works. Commissioner Callison explained that Hennepin County hired a consultant to make a recommendation on how to redraw the district boundaries. Callison noted the boundaries are out of sync in the northwest corner of Hennepin County. District 7 has around 20,000 too many people in it. The Board of Commissioners will ultimately make the decision on where to set the boundaries. Quam asked if that process is very contentious. Callison responded it can be. Callison explained that boundaries for four of the seven districts are fairly close to what they need to be today so there is really no need to adjust them very much. By state law, if a district's population changes by 5 percent (that includes moving out and in to the district) a commissioner will have to run again for reelection and that can increase the level of contentiousness. She stated she thought how the boundaries need to be adjusted is quite clear.

Mayor Kind asked if there are rules about the boundaries having to be contiguous. Or, can they be cherry picked. Commissioner Callison stated they pretty much have to be contiguous. There is an expectation that cities would not be broken up across districts, unless there is no other way to do it. Callison noted there are two partial cities in District 6.

Councilmember Fletcher stated with regard to the Hennepin County budget and looking forward he asked if expenditures were pushed off into the future in order to keep the tax levy flat. He questioned if things were pretty solid. Commissioner Callison stated from her vantage point things are pretty solid. Callison noted that one of the changes made was related to Hennepin Council Medical Center, noting that is also impacted by state and federal budgets. That portion looks like it increased but it will be funded with Medicaid dollars. She stated the Board of Commissioners has a solid understanding of what the issues are and it clearly understands that property values are not going to be increasing for quite some time in the County. She noted that in 2011 Hennepin County saw a reduction of approximately \$20 million in state aid and it will see another \$30 million in 2012 (she clarified she may have those two figures reversed). She also noted the Board made decisions that will be helpful for the long term.

Fletcher noted that the City received a letter from the Hennepin County Sheriff's department stating that the per diem rates are increasing about 50 percent. Commissioner Callison stated she sees that from a state perspective. Callison explained that about one year ago the State cut the reimbursement for people the State housed at the County jail. That was not supposed to be repeated, but it was. She stated the County charges for actual costs. Mayor Kind stated the City didn't receive notification of that until December 2011 after the budget was already developed. Kind asked if cities could be notified earlier in the year about changes for the upcoming budget year. Callison encouraged Kind to ask Sheriff Stanek about that. Callison noted the Hennepin County Sheriff is an elected official and the Sheriff's Office budget flows through the Board of Commissioners. But, Stanek is the expert on the finances of his Department. Callison commented that she did not think that would be a big expense for Greenwood. She noted the County sets its maximum levy in September.

Mayor Kind thanked Commissioner Callison for coming to the meeting.

**B. Kristi Conrad, Ice Skating Rink at Greenwood Park**

Mayor Kind stated Kristi Conrad, a resident, is present to ask Council about ice skating at Greenwood Park.

Kristi Conrad, 21780 Fairview Street, stated she and other residents around Greenwood Park would like Council to consider allowing flooding the drainage area in the Park so people could skate on it. She asked what Council would be willing to authorize the City to do to start such a project. Having access to water is the largest hurdle. The owner of a property located close to the site would be willing to supply the water. The council discussed potential liabilities. Attorney Kelly recommended that the City take "ownership" of this. If it is going to allow it, he suggested that the city should flood the area and maintain it since the City has the liability insurance. He suggested Council consider this for the 2012/2013 winter season. He stated the City could accept a donation from the residents.

Councilmember Fletcher asked if the residents flood the area would the liability would be on their end? Attorney Kelly explained the residents would set themselves up as a potential defendant if there is an injury resulting from a fall on the ice rink they helped create. Kelly noted the residents are at liberty to accept that liability. It would not be the City's issue. If the residents were to do that on their own he recommended the City contact the League of Minnesota Cities Insurance Trust to find out if the City would be stepping outside of coverage by doing that.

Fletcher expressed concern that if it becomes a City project it may make it too costly to do. Ms. Conrad stated if the residents were to take responsibility for the rink she asked Attorney Kelly if the residents would be responsible if someone outside of the area used the rink and injured them self while doing so.

Kelly stated residents could not prohibit some one from outside of the area from using the rink because it would be on public land.

Ms. Conrad stated that the neighbors only want enough water to cover the area and make it level. She noted that currently there is trash and some other things in that area. The area would have to be cleaned up. She stated all that is needed is some water to flood the area.

Councilmember Page asked Ms. Conrad if she was referring to the existing pond in the Greenwood Park. Ms. Conrad responded she is and clarified it is actually referred to as wetland. Page noted Council has previously discussed having Public Works personnel remove the debris. Mayor Kind stated it is currently a dry pond. Kind asked if the residents could clear the area. Ms. Conrad stated there are trees that go from one side of the area to the other that would require some effort to remove.

The Council discussed getting bids to remove the debris. Zoning Administrator/Clerk Karpas stated he could solicit bids for cleaning out the wetland area.

**Page moved, Rose seconded, directing Staff to obtain bids to clean out the wetland area in Greenwood Park.**

Councilmember Fletcher asked if Staff could have a bid by the next meeting.

Keith Stuessi, 5000 Meadville Street, stated he is very familiar with the pond as is his four-year-old dog. The pond is approximately 14,000 square feet. He noted that his children learned to skate on that pond during the late 1970s and early 1980s. Back then the pond held water even during dry years. He explained he is concerned about the fact that the pond hasn't had water in it over the last 7 – 8 years even during very rainy times. Part of the reason could be that it has been filling up with debris and leaves. He stated he would not be surprised if it would take three tanker trucks full of water to fill it up. In his opinion running water from a resident's house will not do the job. He stated he and his wife are in favor of having an ice rink there and they would contribute a goal that they had manufactured about 30 years ago. It is in perfect condition. He commented that years back residents in the area would saw up the debris and have a large bonfire. He stated the residents could again take care of disposing of the wood, which worked for many years. The question is how much water will be required to soak through the debris and fill it to a level where there can be an ice rink.

Mayor Kind asked Zoning Administrator/Clerk Karpas to follow up with Mr. Stuessi to see if Mr. Stuessi's approach to ridding the wetland of debris is a workable option. Kind stated it would be nice to have the debris cleaned up and then once that is done it would open up the opportunity to possibly consider having a rink there.

**Motion passed 5/0.**

**C. Greenwood Night at the Old Log Theater, 8:00 P.M. Friday, January 13, 2012**

Mayor Kind stated Greenwood Night at the Old Log Theater is scheduled for January 13, 2012. This is an opportunity for residents to support the Theater, which is a landmark in the City. She noted she planned on attending the event. She encouraged residents to get their tickets soon. She stated because a quorum of Councilmembers may attend a public notice will be posted and emailed to the City's broadcast list.

**5. PUBLIC HEARING**

A. None.

**6. UNFINISHED BUSINESS**

**A. Request for Compliance Extension, re: Right-of-Way Encroachment, 21580 Fairview Street**

Mayor Kind noted Woody Love is present to address Council regarding a right-of-way (ROW) encroachment at 21580 Fairview Street.

Mr. Love thanked Council and Staff for the opportunity to address them this evening. He noted that Cathy Maes, one of the owners of the estate of which the property is part of, is also present this evening. He explained he is simply the real estate agent for the property. He thanked Council for considering their application for a permit during its December 6, 2011, meeting. He noted the request was not granted. He explained they were now asking for an extension until such time the property is sold. He distributed a copy of a photo, which indicated the asphalt pad on which a boat is parked appears to be a remnant of an old foundation of a garage that had been there in a 1974 survey of the property. The garage was moved in 1977 to its current location. The owners of the estate and he have not had anyone look at it from an structural engineering perspective to assess what will happen if that pad is taken out.

Mr. Love noted the reason the owners of the estate want an extension until the property sells is because they are not in the position of being able to spend funds to remove the pad until the property is finally sold. He stated he is willing to answer any questions Council may have.

Councilmember Page asked what the requirements are of the property owners at this time. Mayor Kind explained the boat and asphalt pad are to be removed right away from the public ROW.

Mr. Love stated that although the property is not currently on the market it will be placed on the market closer to spring. He noted his desire is to expedite the sale of the property. He reiterated they are not asking for a permit just an extension of when the requirements have to be satisfied. He explained assessing the impact of removing the asphalt pad cannot be determined until weather conditions allow for that.

Councilmember Page asked what it will cost to remove the asphalt pad. Mr. Love stated he did not know and he explained he thinks there could be concrete footing underneath the asphalt pad.

Councilmember Rose stated it's his recollection that during its December 6<sup>th</sup> meeting Council was provided with pictures that showed the area where the pad is was at one time covered with grass.

Mayor Kind asked Council if they had any additional questions for Mr. Love at this time. There were none.

Jeannie Bowers, 21600 Fairview Street, stated she has lived next to the 21580 Fairview Street property since 1973. She noted she supported the previous property owner being granted a variance to build the garage. Having the boat parked where it is will not help the sell the property at all.

Mayor Kind clarified the only thing being asked for is an extension.

Ms. Bowers stated she did not understand why the boat should continue to stay where it is parked when aesthetically it doesn't look good, it's a safety and a welfare issue for the City. She then stated she

understands delaying the removal of the hardcover until spring but she didn't think there is any reason to delay removing the boat. The neighborhood would look more pleasing if the boat were removed.

Councilmember Quam asked Ms. Bowers if she is opposed to allowing the hardcover to remain until the 21580 property is sold. Ms. Bowers thought it would be fairer to allow it to remain until the ground thaws. Ms. Bowers commented that there are properties for sale in the City that have been on the market for 3 – 4 years. She thought a better compromise is to require the hardcover to be removed from the ROW when the ground thaws. Quam again asked Ms. Bower if she would be opposed to waiting to removing the hardcover until the property sells. Ms. Bowers stated from her perspective she did not think that would achieve the goal for the City. Until the impervious surface is removed, there is still a problem with the flow of stormwater.

Cathy Maes, 4019 Thrushwood Lane, Minnetonka, noted that she is the executor of the estate which includes the 21580 Fairview Street property. Councilmember Fletcher asked if the estate has funding to remove the asphalt pad in the spring if the property does not sell by then. Ms. Maes explained the estate is waiting for the property to sell and the property has been taken off the market in order to do some work on the financing of the property. The property will be put back on the market as soon as possible. Fletcher asked again whether the estate has funding to pay for removal of the asphalt pad. Ms. Maes responded that is not where the estate would put any of its money at this time. She noted that the boat has been stored in its current location for 10 years and her aunt passed away during this last year. Up until recently there have not been any complaints from any of the neighbors.

Mr. Love noted that from his perspective as a real estate agent it would be tidier to have this on a HUD statement and have it removed at the time of the sale of the property. The HUD statement is a tally of all expenses incurred in the sale of a property. Mr. Love clarified the purpose of being here this evening is the ROW issue. He explained the pervious / impervious surface is a difficult issue because if the abutting property is considered that is also impervious.

Councilmember Page asked what the refinancing is intended to achieve. Ms. Maes stated the objective is to be able to have enough funds to be able continue to fund the home until it sells. A property cannot be on the market when it is being refinanced.

Mayor Kind asked Council how it would like to proceed.

**Page moved, Fletcher seconded, requiring the estate of the 21580 Fairview Street property to remove the boat from the public right-of-way by May 15, 2012, and removing the impervious surface located in the public right-of-way by July 1, 2012.**

Mayor Kind commented that she thought that timeline makes sense.

Mr. Love requested that the date for removal of the impervious surface be changed to 2013 or the time of sale which every comes first, and that the disclosure for the property reflect the order of the City for removing the impervious surface from the public ROW.

Councilmember Page noted that he did not vote in favor of the action Council took on this mater during its December 6<sup>th</sup> meeting. This evening Council is just putting some further clarification on the decision it made during that meeting. That decision requires both the boat and hardcover to be removed. He stated the hardcover has to be removed some time. He noted the City received a complaint and it operates on a complaint-based system. He explained that during its December 6<sup>th</sup> meeting Council assessed the complaint and the majority of the Council did not support granting a permit for private use of the public

right-of-way. He stated from his perspective he does think the estate can generate the money to remove the impervious surface in the ROW.

Mr. Love asked if it is the intent of the Council to address the hardcover violations in front of residential properties. He views that as a policy discussion. He stated quite candidly the property next to the 21580 Fairview Street property (Ms. Bowers' property) has hardcover all the way down the ROW next to that property and it covers a much larger area than the asphalt pad next to the 21580 property. Councilmember Page stated if the City receives a complaint about that it will have to investigate it.

Mayor Kind duly noted that.

Councilmember Quam stated he intends to vote against this because he believes a longer extension should be granted for removing the impervious surface.

**Motion passed 4/1 with Quam dissenting.**

**B. Old Log Theater Site Rezoning (to allow cluster-style development in the future)**

Mayor Kind explained that during Council's December 6, 2011 meeting, Don Stolz, the owner of the Old Log Theater property, and Jon Monson, the owner of Landschute, presented a concept plan for potential a cluster-style redevelopment of that property. The property is currently zoned for single-family residential homes with the Theater allowed as a conditional use. Mr. Stolz and Mr. Monson do not have an agreement or formal application at this time. They would like the City to consider rezoning the property to allow for the possibility of a cluster-style redevelopment in the future. During its December 6<sup>th</sup> meeting Council considered sending the cluster-style redevelopment concept to the Planning Commission for review and comment. Council decided it wanted more time to think about things so it continued the rezoning discussion to this meeting.

Kind stated there are three questions she thought Council should consider. They are as follows.

1. Should the City require an official zoning amendment application before considering rezoning?
2. Should the City consider rezoning without an official zoning amendment application in order to set expectations for future development of the property?
3. What is the best way to get community input? Some options are: having the Planning Commission hold a public hearing; allowing for public comment opportunities at City Council meetings for a proposed zoning amendment; holding an open house at the Old Log Theater.

There was Council consensus to hear public comment before it discussed this further.

Jeannie Bowers, 21600 Fairview Street, stated she thought it's wonderful that the Old Log Theater property could be redeveloped while Mr. Stolz is still alive and that a legacy for him could be created. It's important for Mr. Stolz to have an imprint on the redevelopment. That is also important for the City and its history. She encouraged Council to consider rezoning that property. She commented that had been done for Kent Carlson when he wanted the marina area to be rezoned. She expressed her hope that Mr. Monson's firm will do the redevelopment because his concept plan for that property would enhance the value of Greenwood.

Councilmember Quam asked Ms. Bowers if she has any recollection of a council or planning commission taking rezoning action before a site plan was presented. Ms. Bowers explained that Mr. Carlson went house to house to present his plan but residents didn't always hear the same thing. She stated she thought the way Council is handling the discussion about the possibility of rezoning is respectful to residents because people get information at the same time and in the same manner. She then stated based on the December 6<sup>th</sup> discussion it appears that the residents on Meadville Street support the concept idea. But, there is one obstacle and that is stormwater management. She went on to state that she respects how Council is handling this situation.

Attorney Kelly explained that eleven years ago when Mr. Carlson came forward with a plan he informed the then council and City staff what he wanted to do. The City crafted a new ordinance for that new C-2 District with Mr. Carlson's plan in mind. He noted the City recently tweaked that ordinance. He explained that Mr. Carlson's application was processed somewhat in tandem with the crafting and approval of that new ordinance. Considerable public comment was heard and there was a lot of opposition expressed by the owners of the residential properties located nearest the redevelopment area regarding the perceived impact. When the Lyman Lodge property was redeveloped into Lyman Woods it was handled in a similar manner. Mayor Kind asked whether there was a formal application or final site plan submitted before the Code was changed. Kelly stated an application wasn't submitted but the City did have the trust in the applicant as to what the City would expect. The applicant submitted a proposal that complied with the revised Code. Kelly explained with the C-2 District the City made one half of the development a conditional use and the other half a variance. There were many conditions tied to that redevelopment.

Attorney Kelly noted he had indicated to the Planning Commission that the redevelopment of the Old Log Theater property could be handled using the conditional use process. That would allow the City much greater control.

Mayor Kind asked who paid for the zoning administrator costs, attorney costs and so forth associated with the creation of the C-2 District. Attorney Kelly responded he thought the City basically covered that cost. Kelly explained the City's sophistication in recovering some of its costs has grown in the last decade, noting that has grown even more since Mayor Kind has been in her position.

Mayor Kind noted that later on the agenda Council is going to have the first reading of Ordinance 207, amending Ordinance Code Section 510 updating fees for variances, conditional use permits, and zoning code amendment applications. The purpose of the amendment is to ensure the City is reimbursed for costs incurred to process those items.

There was no one else present in the audience wishing to comment on this item.

Councilmember Quam asked Councilmember Fletcher if he thought the Planning Commissioners would look favorably on considering a rezoning request before a site plan has been submitted for the Old Log Theater property. Fletcher first noted that Attorney Kelly and Zoning Administrator/Clerk Karpas were at the Planning Commission when that topic was briefly discussed. Fletcher then noted the Commissioners were not specifically asked that question. Fletcher stated he thought a few of the Commissioners would like to be provided with a little more detail first. Karpas agreed with that statement.

Quam then asked if Mr. Monson and Mr. Stolz have any idea when they may have a site plan to submit.

Tom Stolz, 5090 Covington Street, stated it was sad for the Stolz family to have to be in the position to have to sell the Old Log Theater property, but it can't be avoided. With regard to the timeframe, he stated it won't be soon enough, yet he wishes it wouldn't have to happen at all.

Mayor Kind asked the Councilmembers if they want to be presented with a site plan before it considers amending the Code. Does the Council want to gather more community input first before sending a potential rezoning of the property to the Planning Commission for review and comment?

Councilmember Fletcher expressed his preference to do nothing at this time. He encouraged there to be some type of open house to which both Councilmembers and members of the community would be invited. The concept could be presented and people could comment on and ask questions about the concept. He stated he doesn't think there is value in drafting ordinance amendments to fit something when there isn't a clear understanding of what that something is.

Mr. Tom Stolz stated he hopes that Council doesn't keep putting off the rezoning to the future because that makes decisions more difficult to make for the Stolz family. He asked Council to continue to make progress with this.

Councilmember Rose stated the Stolz family owns the Old Log Theater property and the family should be able to do what it wants with the property. Council needs to know what the family wants to do before it gets the Planning Commission involved to determine if that is allowable with the current Code.

Mayor Kind stated she thinks the Stolz family and Mr. Monson want to know if Councilmembers are open to the concept of a cluster-style development. From her vantage point she stated that she thinks Council is open to the concept, noting that no Councilmember has stated they disapprove of the cluster-style development idea. But, the Council needs more detail before it can consider amending the Code.

Councilmember Quam commented to date Council hasn't received any negative feedback from the public and that's good.

Councilmember Page stated there is a process to follow when someone wants the Code to be amended. They have to apply for a Zoning Code amendment. He then stated it makes no sense to have Council and the Planning Commission spend time theorizing about what might happen. He suggested Mr. Monson and/or the Stolz family present an idea and apply for a zoning change. He expressed his agreement that there hasn't been much opposition expressed to date about a cluster-style development. He stated it is going to cost money to get the required decisions made.

Mayor Kind asked Council what the City requires for a zoning amendment application. Does a site plan have to be submitted before an application would be considered? Is a concept sufficient? Attorney Kelly stated someone can make an application to rezone a property but it would obviously be tied to a concept. Kind clarified a concept plan and a site plan are two different things. Councilmember Rose stated when the marina rezoning was considered it was a concept.

Jon Monson, 20260 Lakeview Avenue, expressed his appreciation and the appreciation of the Stolz family for Council hearing about the cottage cluster-style development idea. He explained that when they came before Council in December their hope was only that it was an opportunity to see if there would be any possibility that the property could be developed differently than the current zoning. Council needs to consider if it would like to have a cottage cluster-style development on that property. He then stated his biggest concern is making the Stolz family happy by bringing back the original Old Log Theater as the next chapter. He noted the Stolz family is not ready to agree to anything at this time. He stated the Stolz family would like to gain some idea about what direction it should be taking. He commented that Don Stolz had indicated to him how pleased he had been with the attendance at the Theater last December and if that could continue he would be willing to keep the Theater operating the way it is. He stated the Stolz

family wants to have a plan in place for when the time is right to move forward. He then stated it has been valuable to have this discussion.

Councilmember Quam stated from his vantage point Council is not opposed to a cottage-style development. He then stated if that is what Mr. Monson and the Stolz family is looking for it has its answer.

Councilmember Fletcher stated he would like to gain a better understanding of how the property owners along Meadville Street feel about a cottage-style development. He noted he is not opposed to that concept. He stated he does have concern about the City assuming responsibility for a community center on the property; an idea spoken about during the December 6<sup>th</sup> Council meeting.

Mayor Kind reviewed the six items that are needed for a zoning amendment petition as indicated in Section 1160.10 Petition for Amendment. They are as follows.

Subd. 1. A petition for amendments contain the following: the name and address of the petitioner and the petition shall be signed by each of them.

Subd. 2. A description of the area proposed to be rezoned, and the names and addresses of all owners within 300 feet of the property involved.

Subd. 3. The present and proposed zone classification of the area.

Subd. 4. The present use of each separately owned tract within the area, and the intended use of any tract of land therein, if any change in use is proposed.

Subd. 5. Describe the manner in which the proposed rezoning will fit in with the general zoning pattern of the neighborhood, and the zoning and comprehensive plan of the entire city.

Subd. 6. The petition shall be accompanied by 3 copies of a map at a scale of 100 feet to the inch showing the property to be rezoned, the present zoning of the surrounding area, and other information requested by the zoning administrator.

Kind noted the zoning administrator can request additional information be submitted with the application. She stated it is not clear to her if a site plan must be submitted with the application.

Councilmember Fletcher stated submitting more information about the potential zoning plan with an application will help in creating a case for rezoning.

Mr. Monson thanked Council for the opportunity to get it involved very early on in the process.

Mayor Kind thanked the Stolz family and Mr. Monson for getting Council involved early.

There was Council consensus to do nothing more unless the City receives an official application for a zoning amendment for the property.

### **C. Resolution 01-12, Findings of Fact, Cook Variances, 5195 Greenwood Circle**

Mayor Kind noted that during its December 6, 2011, meeting Council approved the variance requests for Bill and Tish Cook, 5195 Greenwood Circle. The Cooks proposed building a deck that will encroach into the minimum east and west side yard setbacks and exceed the maximum permitted impervious surface area. During that meeting Council also directed Staff to prepare findings of fact for approval this evening.

Councilmember Fletcher explained Findings of Fact #12 states "*The existing house as built defines the City's reasonable expectation for west and east side yard setback.*" Fact #13 states "*The applicant's*

*plight is not created by the applicant but a function of the size and dimensions of the lot.*” He asked if they are needed. Attorney Kelly responded they could be removed at Council’s discretion. Kelly stated #13 goes to the heart of the application; it’s one of the essential elements of the test. Fletcher explained when the current house was built it reduced the amount of nonconformity on the property. Fletcher expressed concern that by leaving those two facts in that could set a precedent for the future. Fletcher recommended they be removed if they are not necessary for the case.

Councilmember Page stated he thought #13 is necessary and leaving #12 in doesn’t hurt anything.

Councilmember Fletcher stated part of the reason for granting the variance requests is because the applicants reduced the amount of nonconformity when they built the current house on the property. The previous house had more nonconformity. Fact #4 states *“In support of the request, the applicant represents that although the property was originally issued a variance allowing a lakeside deck, when the city approved needed variance for the house constructed in 1999, the deck was not then constructed and the variance has since expired. The Cook homestead was a replacement of a home that had substantial encroachments on required side yards and greatly exceeded minimum permitted hardcover and the Cook home as built reduced and minimized those encroachments.”* He again stated he did not think #12 and #13 were needed.

Councilmember Page stated #6 states *“The present proposed deck is slightly smaller than that originally approved by the City.”* Councilmember Fletcher stated that already explains why the City granted the variances.

Councilmember Fletcher stated #4 and #6 are the reasons he supported granting the variances. Not #12 and #13. He then stated from his perspective #12 and #13 both imply that anyone with the similar size and dimension lot can request and be granted similar variances.

Attorney Kelly recommended adding *“as built”* to the end of #13. That small addition would tie it back into #4.

Mayor Kind stated she has no problem removing #12 and #13 in the Findings of Fact. Her reasons for approval are expressed in #4 and #6.

Councilmember Page stated the reason for someone approving a variance request doesn’t mean it meets the legal language requirements. He stated #13 should remain in there to ensure there is a non-challengeable variance. Mayor Kind noted that earlier Attorney Kelly indicated #12 and #13 could be removed. Page responded they could be but they shouldn’t be. Councilmember Quam stated he thought a variance has to say the applicant’s plight is not created by the applicant.

Councilmember Fletcher asked when the Findings of Fact have to be approved. Attorney Kelly explained there is a statutory requirement that the Findings should be approved at the time the variance is granted. Mayor Kind stated her understanding writing Findings are required at the time if a variance request is denied, but that Findings can be verbal if the variance is approved. Verbal Findings are then converted to written Findings which are approved at a future date. Kind was not sure if there was a time limit for the written Findings for approval. The City has already given verbal findings. Councilmember Page expressed his disagreement with Kind’s view point. Page stated written Findings and Conclusions of Law should be included in the variance approval.

There was ensuing discussion about the potentiality of #13 establishing a precedent for a similar size and dimension vacant lot and how to revise the wording of it.

Councilmember Page asked Councilmember Fletcher if he would be more comfortable if #13 were changed to say *“The applicant’s plight is not created by the applicant but a function of previous approvals and development of the lot.”*

There was Council consensus to go with Councilmember Page’s recommended change for #13.

Councilmember Fletcher stated #12 talks about defining expectations, yet the expectations are stipulated in the City Code. Attorney Kelly stated #4 talks about the City setting expectations in 1999 for this property.

**Fletcher moved, Page seconded, Adopting RESOLUTION NO. 01-12, “A Resolution of the City Council of the City of Greenwood, Minnesota Acting as the Board of Appeals and Adjustments, for real property located at 5195 Greenwood Circle” setting out the findings of fact and conclusions of law regarding the William B. Cook and Laticia A. Cook variance requests subject to deleting #12 and changing #13 to read *“The applicant’s plight is not created by the applicant but a function of previous approvals and development of the lot.”* Motion passed 5/0.**

**Fletcher moved, Page seconded, moving the discussion to Item 7.A on the agenda and returning to Item 6.D after that discussion. Motion passed 5/0.**

Discussion moved to Item 7.A on the agenda.

**D. Second Reading: Ordinance 199 an Ordinance Amending Code Section 1102, Definitions (adding illustrations and clarifying the definitions for yards), Resolution 02-12, Summary of Ordinance 199**

This was discussed after Item 7.A on the agenda.

Mayor Kind stated this is the second reading of Ordinance 199 amending the Ordinance Code Section 1102 clarifying the definitions of yards and adding illustrations. During its November 1, 2011, meeting Council had the first reading of this Ordinance. It continued the reading to its December 6, 2011, meeting. During its December meeting Council asked that the illustrations be revised to reflect the intent of the definitions. She noted the illustrations have been revised, but that no changes have been made to the language since the first reading.

**Quam moved, Fletcher seconded, Approving Ordinance NO. 199, “An Ordinance Amending the Greenwood Ordinance Code Section 1102 regarding yard definitions and including the illustrations included in the January 4, 2012, City Council meeting packet.” Motion passed 3/2 with Page and Rose dissenting.**

Councilmember Page noted his reasons for dissenting are the same as they were during the December 6, 2011, Council meeting.

Councilmember Rose stated he still doesn’t know what a side yard is.

**Quam moved, Fletcher seconded, Adopting Resolution NO. 02-12, “A Resolution Approving Publication of Ordinance 199 by Title and Summary.” Motion passed 3/2 with Page and Rose Dissenting.**

**E. Second Reading: Ordinance 203, Amending Code Section 910, Prohibit Activities Affecting Health and/or Property (changing language to allow for the civil citation process)**

Mayor Kind stated this is the second reading of Ordinance 203, amending the Ordinance Code Section 910.60 subd. 2 Public and Private Properties / Prohibited Activities Affecting Health and/or Property. This amendment is to make the code consistent with the civil citation process. Council approved the first reading of the Ordinance during its December 6, 2011, meeting. No changes have been made since then.

**Page moved, Fletcher seconded, Approving Ordinance NO. 203, "An Ordinance Amending Section 910 Permitting the Civil Citation Process for Violations of Prohibited Activities Affecting Health and/or Property." Motion passed 5/0.**

**F. Second Reading: First Reading: Ordinance 204, Licensing of Commercial Tree Contractors**

Mayor Kind stated this is the second reading of Ordinance 204, amending Ordinance Code Chapter 4 to establish a requirement that commercial tree contractors be licensed and insured. Council approved the first reading of the Ordinance during its December 6, 2011, meeting. No changes have been made to it since the first reading.

**Fletcher moved, Adopting Ordinance NO. 204, "An Ordinance Amending the Greenwood Ordinance Code Chapters 4 and 5 and Section 1140.80 Requiring the Licensing of Tree Contractors Working Within the City" subject to the licensing fee being set to \$25."**

Councilmember Fletcher stated the City is small and he thought a \$25 fee would cover administrative costs.

Zoning Administrator/Clerk Karpas stated there are also administrative costs incurred to send out the annual licenses, entering the information into the computer and so forth. The \$50 fee originally proposed is to cover all of the administrative costs. Councilmember Quam asked Karpas if he thought that is a fair cost. Karpas noted it is what the other cities charge.

**Motion failed for lack of a second.**

**Quam moved, Rose seconded, Adopting Ordinance NO. 204, "An Ordinance Amending the Greenwood Ordinance Code Chapters 4 and 5 and Section 1140.80 Requiring the Licensing of Tree Contractors Working Within the City." Motion passed 4/1 with Fletcher dissenting.**

**7. NEW BUSINESS**

**A. Appointments and Assignments for 2012**

This was discussed after Item 6.C on the agenda.

Mayor Kind stated the meeting packet contains a draft resolution making appointments and assignments for 2012, noting this is a routine resolution. Two changes have been made to the 2011 appointments. Jerry Hudlow retired from the Deephaven Public Works Department in May 2011. Certified Arborist Manuel Jordan has been filling in since that time and his name is now on the appointment and assignment list as the Forester / Tree Inspector for 2012. Lake Bechtell resigned from the Lake Minnetonka

Communications Commission as a Council appointed representative so his seat is listed as vacant in the list. She noted the Planning Commission seats that expire in March 2012 have not been updated in the list. They will be updated when new appointments are made.

Kind then noted that Councilmember Page is listed as the alternate to the Excelsior Fire District (EFD) Board. She explained the EFD Board meets every other month on the fourth Wednesday of the month and the Lake Minnetonka Conservation District (LMCD) meets on the second and fourth Wednesday of each month. Page is the representative to the LMCD. She stated that she thought it would make sense for the Council to choose a different alternate to the EFD Board unless Page wants to skip an LMCD meeting if he is needed to attend an EFD Board meeting. Page suggested a different alternate be appointed to the EFD Board. She asked Councilmembers Fletcher and Quam if either wanted to be the alternate. Quam stated he has been appointed to the School Board for District 287 and will have additional meetings to attend. Therefore, he is not in a position to serve as the alternate. Fletcher expressed his willingness to serve as the alternate.

City Engineer Martini thanked Council for giving him the opportunity to work with the City for another year. He noted that Bolton & Menk, the firm he works for, does not take this reappointment for granted.

Mayor Kind thanked Engineer Martini for the work he and Bolton & Menk do for the City. Councilmember Quam echoed Kind's comments.

**Page moved, Quam seconded, Adopting RESOLUTION NO. 01-11, "A Resolution Making Appointments and Assignments for January 1, 2012 through December 31, 2012" as identified in the resolution subject to appointing Councilmember Fletcher as the alternate to the Excelsior Fire District (EFD) Governing Board. Motion passed 5/0.**

Discussion returned to Item 6.D on the agenda.

**B. First Reading: Ordinance 207, Amending Code Section 510, Fees (updating fees for variances, conditional use permits, and zoning code amendments)**

Mayor Kind stated this is the first reading of Ordinance 207, amending Ordinance Code Section 510 updating fees for variances, conditional use permits, and zoning code amendment applications. The purpose of the amendment is to ensure the City is reimbursed for costs incurred to process those items. The meeting packet contains a copy of the draft Ordinance including the proposed fee schedule. The language for each of those items includes "*plus consultant fees incurred by the City.*"

There was consensus to change "*Zoning: Conditional Use Permit*" to "*Zoning*" *Conditional Use Permit Application Fee*" for consistency reasons.

Councilmember Fletcher stated consultant fees are vague to him. He asked if it would be appropriate to change it to say "*plus consultant fees including, but not limited to, city attorney, city engineer, and zoning administrator expenses incurred by the city.*"

Attorney Kelly stated that clearly the city attorney and city engineer are contract service providers. At times, the same can be said about the services provided by the City of Deephaven. Kelly suggested the public be informed that it will have to pay for those related contract services provided by Deephaven. He then suggested the language be changed to say "... *consultant and contract service provider fees* ..." He noted the City no longer has any employees and this change would mean the City is going to pass on all costs.

Zoning Administrator/Clerk Karpas stated the Cooks paid about a \$1000 fee to have their variance requests processed. He asked what that fee is for if they are to be charged an additional amount for review by the city attorney, city engineer and zoning administrator. He suggested eliminating the “\$300 *per additional item*” fee for conditional use permit and variance application fees and having the main fee amount be \$500, so the new language would read, “\$500 *plus consultant and contract service provider fees incurred by the city in excess of \$500.*”

Attorney Kelly stated that in the past he has expressed support for a fixed fee to avoid an accounting demand. Otherwise, the City has to be able to demonstrate and justify what the fees are for. Kelly cautioned Council against creating an opportunity for someone to ask for a full accounting of the costs to justify the charge. He explained a fixed fee is an approximation of the average cost the City incurs. Kind asked how that works when there is something very completed to process. Zoning Administrator/Clerk Karpas stated the “*plus consultant and contract service provider fees above the upfront \$500 fee*” would address that. Kelly stated that would require itemized billings from people like the city attorney and city engineer and other consultants. Karpas stated that most of the costs for variances for the city attorney, the city engineer and his services won’t reach \$500.

Councilmember Page stated the Lake Minnetonka Conservation District (LMCD) sets its fees and then it has a clause in its ordinances that states fees may be refunded if not used. The fees charged are based on the LMCD’s hourly rates. He then stated he was not bothered by the fact that the Cooks had to pay \$1000 to get multiple variances for their deck. Councilmember Fletcher clarified the cost was \$1200. Page stated variances are expensive because they take a lot of time to process.

Mayor Kind suggested the following language for conditional use permit and variance applications fee – “\$400 *first item, \$300 per additional item plus consultant and contract service provider fees incurred by the City if they exceed the base fee amount.*” Councilmember Page suggested changing “*if they exceed*” to “*as they exceed*”.

Attorney Kelly suggested the base fee for processing conditional use permit and variance applications should be what the typical administrative cost is. He stated the \$400 base fee can easily be justified based on that. In certain situations such as complicated variances the costs can be significantly more. He suggested either going with an additional \$300 per item or with \$400 plus consultant and contract service provider fees. Councilmember Fletcher stated he prefers the second option.

Mayor Kind and Councilmember Fletcher supported changing the language for the code amendment, conditional use permit and variance applications fee to – “\$400 *plus consultant and contract service provider fees incurred by the City as they exceed the base fee amount.*”

Mayor Kind stated the plus consultant fees language came from the administrative review section of the Code. She suggested that each instance where “*plus consultant fees incurred by the City*” is used in the fee section of the code, should be reviewed and modified as appropriate to reflect the new proposed language. Councilmember Fletcher agreed to add that language for the second reading of the Ordinance.

**Fletcher moved, Page seconded, adopting the first reading of Ordinance 207 amending Section 510 updating fees for variances, conditional use permits and zoning code amendment applications subject to changing “*conditional use permit*” to “*conditional use permit application fee,*” and changing the fee for code amendment, conditional use permit and variance applications to “\$400 *plus consultant fees incurred by the City as they exceed the base fee amount.*” Motion passed 5/0.**

**C. Temporary parking Permits**

Mayor Kind explained that currently the City Code requires a parking permit for on-street parking of construction vehicles at a price of \$50 per project (Section 305.00 and Section 510.00). The Code does not allow for temporary parking permits in no parking zones for parties and similar events. However, in the past the City has issued permits for things such as parties and special events. If the City wishes to continue with the practice of issuing these types of temporary parking permits, the Code should be revised accordingly. The meeting packet contains excerpts from the Cities of Deephaven and Woodland City Code regarding temporary parking permits.

Councilmember Fletcher stated he did not want to make the fee punitive.

There was Council consensus to have Staff draft a temporary parking permit ordinance for a first reading during the February 1, 2012, Council meeting.

**8. OTHER BUSINESS**

**A. None.**

**9. COUNCIL REPORTS**

**A. Fletcher: Planning Commission, Excelsior Boulevard Street and Water Project, Lake Minnetonka Communications Commission**

With regard to the Planning Commission, Councilmember Fletcher stated the Commissioners did discuss the shore impact zone changes and their recommended changes will come before Council for consideration during its February 1, 2012, meeting. He noted that two Planning Commissioners expressed concern about potential rezoning and redevelopment of the Old Log Theater property.

**B. Kind: Police, Administration, Updated Code Books**

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind noted the SLMPD Coordinating Committee has not met since Council's last meeting. She stated negotiations with the union continue.

With regard to Administration, Kind stated the meeting packet contains a copy of a site statistics report on access to the City's website. A copy of the report will be included in each regular meeting packet. A VIBES report about citation revenue will also be included in the packet on a regular basis.

Kind asked the other Councilmembers if they received updates to the Code Book. Kind stated the plan is for them to receive an updates once a year to save on printing costs.

**C. Page: Lake Minnetonka Conservation District**

Councilmember Page stated he had nothing to report.

**D. Quam: Roads & Sewer, Minnetonka Community Education**

Councilmember Quam stated he has nothing to report.

**E. Rose: Excelsior Fire District**

Councilmember Rose stated there has not been an Excelsior Fire District (EFD) Board meeting since the last Council meeting.

**10. ADJOURNMENT**

**Page moved, Rose seconded, Adjourning the City Council Regular Meeting of January 4, 2012, at 9:00 P.M. Motion passed 5/0.**

**RESPECTFULLY SUBMITTED,**  
**Christine Freeman, Recorder**